



NEW YORK STATE SENATOR

Michael F. Nozzolio

## US District Court Opinion Affirms Senator Nozzolio's Legislation

MICHAEL F. NOZZOLIO August 27, 2009

| ISSUE: **TAXES**

New York State Senator Michael Nozzolio praised United States District Court Justice Carol Amon for issuing an important decision reaffirming the validity of Senator Nozzolio's legislation that requires sales taxes be collected on all cigarettes sold to non-Native Americans by Indian-owned businesses. The legislation, which was enacted with overwhelming bipartisan support in December of 2008, was cited in the District Court's decision where Justice Avon states, "Non-Indians making cigarette purchases on an Indian reservation shall not be exempt from paying the cigarette tax when purchasing cigarettes within this state."

Since the enactment of this historic legislation, Governor Paterson has failed to take the appropriate action to enforce the law. The governor has instead continued to raise taxes and increase fees on all New York State services including a 2% utility tax assessment, taxes on healthcare services and increased DMV fees. If enforced, Senator Nozzolio's legislation would result in the collection at least \$400 million which could be used to reduce or eliminate some of the approximately 100 new taxes and fees that were included in the 2009-2010 New York State budget. Senator Nozzolio stated, "In a time when our State is struggling, it is unconscionable that the Governor refuses to follow the law he signed to collect these taxes and grant some relief to our hard-working taxpayers."

This District Court's conclusion reaffirmed the position that Senator Nozzolio has taken on the Indian taxation issue. The decision recently rendered by United States District Court Justice Carol Avon states, "There is no dispute that the state has power to impose taxes on cigarettes sold by Indians to non-Tribe members." Justice Avon continues, "It is settled law that a state is without power to tax cigarettes sold to Indian tribe members for their own consumption, but has the power to tax on-reservation cigarette sales to persons other than reservation Indians."

New York businesses have long had a competitive disadvantage to Indian-owned businesses by their ability to sell cigarettes at a significant tax-free discount. Senator Nozzolio's legislation would have put a stop to this practice and leveled the playing field for New York businesses. "I have repeatedly implored Governor Paterson to enforce this law so that our businesses have a fair and equal opportunity to sell their goods," Senator Nozzolio commented, "The Governor's refusal has been an affront to the legal taxpaying business owners in my District."

"This decision by the United States District Court was crucial to our cause," concluded Senator Nozzolio, "It sends a strong message to Governor Paterson that he must implemented the laws of this State, it sends a strong signal to all state and federal courts that this law is clear and should be enforced and it shows that we will not stop fighting for our local small businesses."